

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

THE PEOPLE OF THE STATE OF NEW YORK

Plaintiff,

v.

ACTAVIS, PLC, and  
FOREST LABORATORIES, LLC,

Defendants.

Case No.: 14-cv-7473

USDC SDNY  
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ELECTRONICALLY FILED  
DOC #:  
DATE FILED: 10/28/14

**PRE-HEARING ORDER**

In preparation for the evidentiary hearing (“Hearing”) on Plaintiff’s Motion for a Preliminary Injunction (“Motion”), to begin on November 10, 2014, at 10:00 a.m. in Courtroom 18C; it is **ORDERED**:

**1. BRIEFING**

- a. Plaintiff’s reply brief is due on or before Wednesday November 5, 2014, as previously ordered.
- b. Defendants’ surreply brief is due on or before 12 noon on November 9, 2014.

**2. PRE-HEARING EXCHANGES.**

- a. At noon on Saturday, October 25, 2014, the Parties shall exchange preliminary lists of potential fact and expert witnesses who may provide testimony in each Party’s presentation of evidence at the Hearing beginning on Monday, November 10, 2014.

- b. On or before 5:00 p.m. on Monday, October 27, 2014, the Parties shall exchange preliminary lists of potential rebuttal fact and expert witnesses who may provide testimony in response to the testimony of the witnesses identified by the other Party.
- c. For any witness identified pursuant to paragraphs 1(a) or (b) above, the disclosing Party shall provide to the opposing Party:
  - i. For witnesses not yet deposed in this action, the potential witness's availability for deposition on or before November 7, 2014;
  - ii. for any witness for which the disclosing Party has not previously provided a declaration in support of or in opposition to the Motion, the disclosing Party will produce a statement identifying the witness's place of employment and describing the issues to be covered in the testimony.
- d. For any retained expert witness disclosed pursuant to paragraphs 1(a) or (b), an expert report as required by Fed. R. Civ. P. 26 shall be provided no later than 48 hours before the expert's deposition.
- e. At noon on Monday, November 3, 2014, the Parties shall exchange a final list of witnesses who will offer live testimony at the Hearing. Any additions to the witness list shall be for good cause shown.
- f. If any Party intends to present any deposition testimony during its presentation of evidence at the Hearing (that it is permitted to offer under the rules of evidence and procedure), that Party shall disclose the identities of such witnesses by noon on Monday, November 3, 2014. Designations of such

testimony (by page and line of the deposition transcript) shall be disclosed to the opposing Party by 5:00 p.m. on Tuesday, November 4, 2014. Any counter-designations of the opposing Party (that it is permitted to offer under the rules of evidence and procedure) shall be provided by 5:00 pm on Thursday, November 6, 2014. Subsequent modifications of the designations shall be exchanged prior to 5:00 pm on Saturday, November 8, 2014. Any revisions after this date shall be only by agreement of the parties, such agreement not to be unreasonably withheld. Any disputes over designations or counter-designations of testimony shall be presented to the Court by 9:00 a.m. on Monday, November 10, 2014.

- g. At 5:00 pm on Thursday, November 6, 2014, the Parties shall exchange a list of exhibits to be offered at the Hearing by each Party in its presentation of evidence, except for cross-examination and impeachment. Any supplements to the list of exhibits in response to the other Party's list shall be made by 8:00 pm on Friday November 7, 2014.

### **3. CONDUCT OF DEPOSITIONS.**

- a. All depositions shall be completed on or before Friday, November 7, 2014, unless both Parties agree to hold a deposition after that date.<sup>1</sup> For any individual who is deposed after Thursday, November 6, 2014, any designations from those depositions shall be made within 24 hours after the

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<sup>1</sup> As to the proposed November 7, 2014 deposition cutoff, the parties have a disagreement as to one witness. Plaintiff has informed Defendants that, due to his teaching schedule, Plaintiff's economic expert witness is only available for deposition on Sunday, November 9, 2014. Defendants believe that date is too late in light of the November 10 hearing date and reserve all rights to move to exclude the testimony of that witness. The parties are attempting to resolve this issue without Court intervention, but have flagged this issue so that the Parties may submit this Order as otherwise agreed.

receipt of the deposition transcript. Counter-designations shall be provided twenty-four hours thereafter.

**4. PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Proposed findings of fact and conclusions of law shall be served with a courtesy copy sent to the Court by noon on Saturday, November 8, 2014. Such documents shall be filed with the Clerk of the Court on Monday November 10, 2014, and such filings may be done with confidential information under seal.

**5. CONDUCT OF THE NOVEMBER 10, 2014 HEARING.**

- a. Each side shall have a total of 12 hours during which to present evidence at the Hearing, including both cross and direct examinations, and deposition testimony (*i.e.*, the time a party takes cross-examining a witness counts against the examining party's 12 hours).
- b. Opening and closing statements shall not be included in the 12 hours, but each statement shall be limited to a half hour per side.
- c. The parties will identify the order in which the witness will testify and a good faith estimate of the expected time of the direct examination no less than forty-eight (48) hours prior to testifying. Exhibits for each witness shall be disclosed to the opposing Party twenty-four (24) hours prior. For Plaintiff's rebuttal and Defendants' sur-rebuttal cases, if any, witnesses shall be identified twenty-four (24) hours prior. Exhibits and deposition testimony to be used for cross-examination, impeachment and redirect need not be disclosed in advance.

**6. ADMISSIBILITY OF EXHIBITS AT THE HEARING.**

- a. Copies shall be admissible as originals. Except for extraordinary objections to admissibility (e.g., forgery, intentional misrepresentation) all documents will be admissible for purposes of the Hearing only. Objections, if any, to the use of evidence will go to the weight the evidence is to be given in considering the Motion. Nothing in this paragraph shall be deemed to limit the ability of a Party to assert any objection to the admissibility of any evidence at a later time. If there is no dispute as to the authenticity, foundation or admissibility of an exhibit, a party may introduce that exhibit into evidence at the Hearing without testimony and thereafter publish the exhibit to the Court by any reasonable means or as directed by the Court.

Dated:

October 27, 2014  
New York, New York



Hon. Robert W. Sweet, U.S.D.J.